

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

F.A.O. No. 243 of 1987
Date of Decision: Sept. 6,2006

Radhe Sham and others ***Appellants***

Versus

Ram Singh and another ***Respondents***

CORAM : Hon'ble Mr.Justice Ashutosh Mohunta

Present: Ms. Divya Sharma, Advocate
for the appellants.

None for the respondents.

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ASHUTOSH MOHUNTA, J.(Oral)

This judgment shall dispose of F.A.O. Nos. 243 of 1987 filed by the claimants and F.A.O. No. 194 of 1987 filed by the owner of the offending vehicle. Both these appeals have been filed against a common judgment passed by the Motor Accident Claims Tribunal, Hissar, dated 28.11.1986 whereby a compensation of Rs.15,000/- has been awarded to the claimants on account of the death of Hira Lal, a minor child of 8 years.

Briefly the facts of the case are that on 27.10.1985 at about 6.30 P.M. Hira Lal, a boy of 8 years, was standing in the street of village Dhani Kumharan, District Hissar. He was on his left hand side in front of a vacant plot of Jella son of Nathu while his father-Radhe Sham and Dharam Pal were sitting in their plot adjoining the plot of Ram Singh-respondent No.1. Ram Singh came from his fields on his tractor No. HRB-5513 and was going to his plot through the street and without blowing any horn struck against the boy who fell down on the road and suffered multiple injuries. The child was picked up by Radhe Sham and his brother Dharam Pal who were sitting near the place of accident and was rushed to the Civil Hospital at Hansi. However, Hira Lal died on the way. A claim petition was filed in which a compensation of only Rs.40,000/- was claimed on account of the death of the child. It was averred that the accident took place

because of the rash and negligent driving of the tractor driver-Ram Singh.

A joint written statement was filed by Ram Singh who was driving the tractor and Budh Ram who was his father and owner of the tractor in which the factum of accident was denied. It was averred that a false case has been registered against them by the police under the influence of the appellants due to family enmity.

The first question that arises for determination is – Whether the accident took place due to the rash and negligent driving of Ram Singh?

The claimants examined Radhe Sham-PW3, father of the deceased, and Dharam Pal-PW4. Both these witnesses were present in the adjoining plot where the accident took place. They had witnessed the occurrence. It was stated that the tractor which was driven by Ram Singh struck against Hira Lal. The child was immediately taken to Dr. Narsi in the village who advised that he be shifted to the Civil Hospital. However, when they reached the Civil Hospital the child was declared dead. Both the witnesses have deposed consistently with regard to the manner in which the accident took place. The plea of the respondents that they have been falsely implicated by the police due to enmity has not been substantiated by them by leading any evidence. The accident had taken place in the evening and thereafter the child had been taken to the hospital and FIR has been registered on the very next day. Thus, keeping in view the evidence led on behalf of the appellants, I uphold the findings of the Tribunal and hold that the accident took place because of the rash and negligent driving by Ram Singh.

The next question that arises for determination in the present case is – What is the amount of compensation that the appellants are entitled to receive?

The deceased in the present case was a boy of 8 years studying in Class-I. Although the amount of Rs.40,000/- was claimed in the claim petition, however, Ms. Divya Sharma, counsel for the appellants, has very vehemently argued that even though the appellants have claimed a compensation of Rs.40,000/- only yet there is no embargo on the Courts to award higher compensation which is just and reasonable. Learned counsel has relied on the provisions of Section 166(1) & (4), 158 (6) and Section 168 of the Motor Vehicles Act to contend that even where the amount

claimed is less, yet the Courts can always grant “just compensation”. Learned counsel has relied on the judgment in ***Nagappa v. Gurudayal Singh and others*** reported as (2003) 2 Supreme Court Cases 274 wherein their lordships have held as under:-

“In the Motor Vehicles Act, 1988 there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is – it should be “just” compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This is clear from Sections 166 (1) & (4), 158 (6) and 168.”

Learned counsel has further claimed that although a sum of Rs.15,000/- only has been awarded as compensation in the present case, however, in view of the judgment in ***Lata Wadhwa and others v. State of Bihar and Others*** reported as (2001) 8 Supreme Court Cases 197 wherein it has been held that where the age of the deceased is between 5 to 10 years then a compensation of Rs.2 lacs should be awarded.

After hearing the counsel for the appellants, I am of the considered opinion that although the appellants have claimed compensation of Rs.40,000/- only, yet the Courts are fully empowered to grant higher compensation which in the Court's opinion is just in view of the provisions of Sections 166(1) & (4), 158(6) and 168 of the Motor Vehicles Act. The case of the appellants is squarely covered by the judgment in ***Nagappa's case (supra)***.

Now, the next question is- what is the amount of compensation that the claimants are entitled to receive? It is pertinent to note that the deceased who was 8 years of age was studying in Class-I. In ***Lata Wadhwa's case (supra)*** it has been observed that the loss of the child to the parents cannot be compensated in terms of money. Learned counsel has placed reliance on a decision of the Allahabad Bench in the case of ***New India Assurance Co. Ltd. v. Vibha Sengar***, 2002 ACJ 739 (Allahabad) wherein in a case of death of a student of 12 years old, a sum of

Rs.1,50,000/- was awarded. Learned counsel has also relied on *Lata Wadhwa's case (supra)* wherein the Hon'ble Apex Court had awarded a compensation of Rs.2 lacs.

Keeping in view the aforementioned judgments, it would be appropriate to award a compensation of Rs.1,50,000/- to the claimants. They are also held entitled to interest at the rate of 8% per annum on the enhanced amount of compensation from the date of filing of the claim petition till realisation. As the vehicle was not insured, therefore, both the respondents are held jointly and severally liable to pay the compensation to the claimants.

Accordingly, the appeal filed by the claimants is allowed and the appeal filed by the owner of the offending vehicle is dismissed.

6.9.2006
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(ASHUTOSH MOHUNTA)
JUDGE